IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application no. 1378 of 2007

M/s. Cosmos Co-op. Bank Ltd. Appellant
Vs.

Kapol Co-op. Bank Ltd.& anr. Respondents

Mr.Shrish Gupte, Sr.Counsel with Mr.Y.A.Sakhare i/b.
M/s.YKS Legal for appellant.
Mr. K.M. Sangani i/b. S.G. Rajput, Advocate for
Respondent no. 1.
Mr. P.A. Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

August 3, 2007.

P.C.

. Heard Mr.Gupte, the learned Senior Counsel for the Petitioner Bank who has been Respondent no. 12 in case no. 52/SW/2005 before the Additional Metropolitan Magistrate, 47th Esplanade, Mumbai. The prayer of the Bank for discharge from the said case has been turned down by the impugned order dated 30-3-2007.

2. The present Respondent no.1 Bank is the Complainant in case no. 52/SW/2005 and in all 12 accused were issued the process. It was submitted that accused no. 11 was the Chief Officer of accused no. 12 Bank and he had signed co-acceptance

documents on behalf of accused no. 12. The Complaint was dismissed against accused nos. 3,4,5,6,8,9,10 and 11 and it survived only against accused nos. 1,2,7 and 12. It is also pertinent to note that accused no. 11 is no more and by the impugned order dated 30-3-2007 the learned Magistrate has held that there is prima-facie case to frame charge against accused nos. 2 and 12 only by discharging accused nos. 1 and 7. The Complainant Bank has appeared in this application and its counsel had submitted that this application be allowed as there is no case against the original accused no.

12.

3. It is evident from the impugned order that accused no. 1 was a Partner of the accused no. 3, a firm by name Manoj Enterprises and accused no. 2 was a Chartered Accountant and the friend of accused no. 1 who was bringing proposals for sanctioning of loan or credit limits of accused no. 1. It was the further case of the Complainant that the deceased accused no. 11 being the Chief Officer of accused no. 12 Bank was signing the documents and the correspondence and the entire transaction between

accused no. 12 and Complainant was done on the official stationary by accused no. 11 whereas it was the case of accused no. 12 that signatures of accused no. 11 were forged and it had not entered into any transaction with the applicant Bank. It further contended that signatures of accused no. 11 were forged. Having regards to these allegations of the complainant - Bank, I am satisfied that the present applicant Bank (original accused) cannot be prosecuted and more so when accused no. 11 is no more.

4. Hence, the application is allowed and accused no. 12 is hereby discharged from CC no. 52/SW/2005 (old number 474/S/1991).

(B.H.MARLAPALLE,J.)